

## REMARKS/ARGUMENTS

By this paper, Applicant replies to the Third Examiner’s Answer of February 24, 2009 and respectfully requests reopening of prosecution and reconsideration of the application.

Claims 1, 2, 4, 5, 10-14, 17, 18, 23, 25, 30, 31, 33, 34, 39-42, and 106-120 are now pending. Claims 1, 14 and 30 are independent.

### I. § 101 Issues

The § 101 issues are obviated by the amendments to the claims. All independent claims now recite actions performed by a “computer” or an “electronic trading system,” which are machines. The independent claims thus fall within statutory subject matter of § 101.

The analysis of the dependent claims in the Third Examiner’s Answer is incorrect. A dependent claim may recite limitations that render the claim proper § 101 subject matter, even if the parent claim is not proper § 101 subject matter. *See, e.g., In re Abele*, 684 F.2d 902, 908, 214 USPQ 682, 687-88 (CCPA 1982) (independent claim 5 is not patentable, but dependent claim 6 is). The failure to independently examine each claim is error.

### II. § 112 ¶ 2 Issues

Most § 112 ¶ 2 issues are obviated by the amendments to the claims.

The concern for the term “better” in claims 109 and 115 is not well founded.

First, the Third Examiner’s Answer reflects a misparaphrase of the claim language. The Third Examiner’s Answer misparaphrases the claims, by suggesting that the claims recite a “bid” that is “better.” The Third Examiner’s Answer is wrong. Rather, claims 109 and 115 recite a better “price.” A rejection based on a misparaphrase of a claim may be withdrawn.

Further, “better price” is a common term in the art of trading systems and securities trading, reflecting either a higher price for a bid to buy, or a lower price for an offer to sell. This fact has been noted by Applicant on several occasions. The Examiner bears the burden of proof on § 112 ¶ 2, just as on every other ground. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (“The examiner bears the initial burden, on review of [any ground of unpatentability], of presenting a *prima facie* case of unpatentability. ... After ... argument is

submitted by the applicant ..., patentability is determined ... by a preponderance of evidence...")

Because the Examiner stands on nothing but personal opinion, with no evidence whatsoever, the rejection lacks substantial evidence support, and must either be supported or withdrawn.

### III. § 103 Issues

The § 103 issues are obviated by the amendments to the claims. Neither Broka '483 nor Togher '055 show the "order entry user interface" with the properties recited respectively in claims 1, 14 or 30. The rejections may be withdrawn.

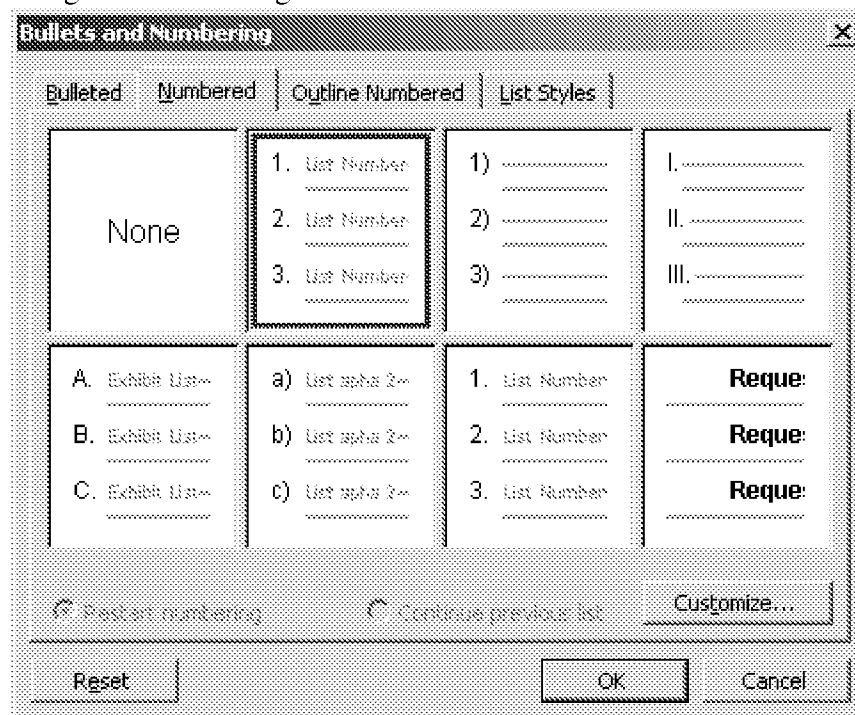
### IV. Designation of Paragraphs in the Office Action

The Examiner's attention is drawn to MPEP § 707.07(k):

#### **707.07(k) Numbering Paragraphs**

It is good practice to number the paragraphs of the Office action consecutively. This facilitates their identification in the future prosecution of the application.

The examiner's attention is also drawn to the menu in Microsoft Word, Format > Bullets and Numbering, which gets to this dialog box:



The Examiner will observe that this Reply paper is remarkably less clear than it would have been had there been paragraph numbers in the Office Action to which to refer.

**V. Conclusion**

Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning this application by electronic mail.

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that an extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 01-1041.

Respectfully submitted,  
BGC PARTNERS, INC.

Dated: April 24, 2009

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